

**SENSITIVE**  
RECEIVED  
FEDERAL ELECTION  
COMMISSION

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

2011 FEB -8 AM 10:44

2011 FEB -8 P 12:00

In the Matter of

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**CELA**

)

MUR 6406

)

CASE CLOSURE UNDER THE

LEE TERRY FOR CONGRESS

)

ENFORCEMENT PRIORITY

AND DAVID BYWATER,

)

SYSTEM

AS TREASURER

)

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

and are deemed inappropriate for review by the Alternative Dispute Resolution

Office are forwarded to the Commission with a recommendation for dismissal, or in certain

cases where the complaint, the response, and publicly available information fail to give rise

to a reasonable inference that a violation has occurred, a no reason to believe finding.

In this matter, complainant Laura A. Wigley of the Nebraska Democratic Party

alleges that Lee Terry for Congress and David Bywater, in his official capacity as treasurer

("the Committee"),<sup>1</sup> violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by including

defective disclaimers on an "electronic [campaign] ad." Attached to the complaint are what

appear to be three copies of an undated news story downloaded from the website

[www.omaha.com](http://www.omaha.com), which includes a two-page advertisement asking "Do Lies Make you

Angry?" on the first page and stating "Visit the TruthGauge and see if candidates are telling

the truth!" on the second page. The disclaimer "Paid for by Lee Terry for Congress," which

appears on the bottom, right-hand side of the first page of the advertisement, is not enclosed

within a printed box. According to the complainant, the advertisement, which was

<sup>1</sup> Congressman Lee Terry represents Nebraska's Second Congressional District.

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1    apparently placed by the Committee on the www.omaha.com website for a fee, constitutes a  
2    “public communication” pursuant to 11 C.F.R. § 100.26, and therefore the disclaimer  
3    should have been enclosed within a printed box, pursuant to 2 U.S.C. § 441d(c)(2) and  
4    11 C.F.R. § 110.11(c)(2)(ii).

5            In response, Committee treasurer David Bywater asserts that the Committee had  
6    hired Redstone Communications, Inc. (“Redstone”), a media consulting firm, to design and  
7    place the advertisements, and that the Committee had provided the disclaimer to Redstone  
8    “in the correct format.” Mr. Bywater asserts, however, that although the disclaimer had  
9    “appeared correctly on many of the placed ads,” in a few instances, the Committee’s  
10   disclaimer was not enclosed within a printed box. According to Mr. Bywater, the  
11   Committee has informed Redstone that the omission of the box around the disclaimer  
12   constituted a violation of 11 C.F.R. § 110.11, and advises that the Committee does not plan  
13   to use Redstone to place campaign advertisements in the future. Finally, Mr. Bywater  
14   pledges that “this mistake . . . will not occur again.”

15            Mr. Bywater does not dispute the complainant’s assertion that the Internet  
16   advertisement at issue was placed on another person’s<sup>2</sup> website for a fee. Thus, as the  
17   complainant noted, the advertisement constituted a public communication pursuant to  
18   11 C.F.R. § 100.26 and, as such, was required to have a disclaimer, pursuant to 2 U.S.C.  
19   § 441d(a)(1) and 11 C.F.R. § 110.11(a)(1). However, with respect to the additional  
20   disclaimer requirements for printed communications set forth at 2 U.S.C. § 441d(c) and  
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<sup>2</sup>        “Persons” include, *inter alia*, corporations, associations, and any other organization or group of persons, excepting the Federal Government, see 11 C.F.R. § 100.10. Thus, “person” would include www.omaha.com.

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11 C.F.R. § 110.11(c)(2), including the “printed box” requirement, the Commission has observed that “Internet pages” do not constitute “printed communications,” *see* MUR 5526 Statement of Reasons (“SOR”) dated November 27, 2006 (Commissioners Walther, Weintraub, Lenhard, Mason, Toner, and von Spakovsky); *see also* MURs 5672 and 5733 SOR, dated March 13, 2007 (Commissioners Weintraub, Lenhard, Mason, Toner, and von Spakovsky).<sup>3</sup> In the MUR 5526 SOR, the Commission explained that: 1) “the ordinary meaning of the word ‘print’ does not include communications on Internet pages . . . [w]hile such information can often be printed out, neither the printing nor the existence of a printout transforms the Internet page itself into a printed communication;” and 2) “when FECA uses the words ‘Internet,’ ‘web,’ ‘website,’ or ‘electronic’ . . . it does not mean something ordinarily understood as being in print or in printed form.”

In this matter, the complainant’s allegations relate only to the Committee’s Internet advertisement, and there is no indication that the Committee’s printed advertisements, if any, failed to include printed boxes around the disclaimers. Therefore, based on the complaint, the response, and publicly available information, we recommend that the Commission find there is no reason to believe that Lee Terry for Congress and David Bywater, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c).

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<sup>3</sup> MUR 5526 involved allegations that a campaign’s website failed to enclose its disclaimers in a printed box, whereas MURs 5672 and 5733 involved similar allegations involving disclaimers on a campaign’s emails.

**RECOMMENDATIONS**

1. Find no reason to believe that Lee Terry for Congress and David Bywater, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c).
2. Close the file and send the appropriate letters.

Christopher Hughey  
Acting General Counsel

Date

2/4/11

BY:

Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Ruth Heilizer  
Attorney  
Complaints Examination  
& Legal Administration